Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90

REPLY COMMENTS OF WINDSTREAM SERVICES, LLC

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REPLY COMMENTS OF WINDSTREAM

Windstream Services, LLC ("Windstream") submits these reply comments in response to the record developed so far in the Commission's rulemaking proceeding to establish the Rural Digital Opportunity Fund ("RDOF").[1]

I. INTRODUCTION AND EXECUTIVE SUMMARY

The comments reflect broad recognition among stakeholders of RDOF's enormous potential to expand broadband availability and bring robust, future-proof network infrastructure to millions of rural Americans. Given the stakes and the serious costs that poor data would impose on RDOF, Windstream joins the chorus of public and private sector commenters in urging the Commission to obtain improved broadband and location data before holding the auction. With improved nationwide data, the Commission could better target limited Universal Service Fund ("USF" or "Fund") dollars to maximize coverage for rural Americans. The time it would take to obtain this data would cause little, if any, delay to the RDOF auction, given the time needed to resolve the current proceeding and finalize auction procedures. At a minimum, the Commission should adopt USTelecom's suggestion to begin the five-to-eight-month process

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1 *Rural Digital Opportunity Fund; Connect America Fund*, Notice of Proposed Rulemaking, FCC No. 19-77, WC Docket Nos. 19-126 & 10-90 (rel. Aug. 2, 2019) ("*Notice*" or "*NPRM*").

of developing a Broadband Serviceable Location Fabric ("Fabric") for the unserved areas that will be auctioned in Phase I, so that bidders can rely on more accurate location counts and geocodes to develop efficient bidding strategies.

If the Commission proceeds with a two-phase RDOF, Windstream supports several suggestions to improve RDOF and achieve better outcomes for rural consumers, and cautions against suggestions that would harm consumers and lead to inefficient auction results:

- *Eligible Locations*. The Commission should define eligible locations as areas lacking 25/3 Mbps broadband and voice service; areas where the price cap carrier receiving model-based support is the only terrestrial provider having deployed 25/3 Mbps service should also be eligible to ensure that these areas can receive sufficient support to maintain that service. Additionally, locations reported as served at 25/3 Mbps should be eligible, but only where the applicant bids to upgrade those locations to a higher performance tier. The Commission should not prioritize areas without 10/1 Mbps at this time.

- *Geographic Bidding Units*. The Commission should establish census blocks as the minimum geographic bidding units, to best maximize auction participation and network deployment to unserved areas.

- *Deployment Requirements*. To encourage participation and efficient bidding, the Commission should establish firm deployment requirements before the auction that lend certainty to providers' service obligations and buildout costs. It should not reward speedier deployment at the expense of faster speeds and future-proof fiber.

- *Performance Tiers and Bidding Weights*. The Commission should encourage fiber deployment by setting the performance tiers and bidding weights to incentivize higher speeds and increase the weight for high-latency bids. The Commission should reduce the weight assigned to the above-baseline tier to 15. At the same time, it should provide additional opportunities to receive higher-speed service to areas where above-baseline deployment would be cost prohibitive by adding a 50/6 Mbps "intermediate tier" with a weight of 25.

- *Voice Service Obligations*. The Commission should require bidders to offer standalone voice service, either through their own facilities or resale, throughout their winning areas as an Eligible Telecommunications Carrier ("ETC") upon receipt of RDOF support.

- *Gating Criteria*. Windstream supports reasonable upfront requirements to ensure that bidders can meet their RDOF obligations, including capping bids at the provider's annual revenue, requiring bidders to submit more detailed technical information, and allowing outside counsel, under a protective order, to review and challenge long form applications. Bidders must become ETCs before receiving support. The Commission should not exclude bidders because they have recently sought protection under the bankruptcy laws, an overbroad proposal that risks excluding bidders that are better positioned to meet deployment obligations precisely because of the reorganization and debt reduction mechanisms enabled by bankruptcy proceedings.

- *Letter of Credit*. The Commission should eliminate letter of credit requirements as a costly burden that diverts USF funds to banks and deprives providers of capital better used for deployment.

- *Protecting Providers from Bad Data*. The Commission should hold providers harmless when the FCC data do not accurately reflect actual location counts.

- *Rejecting Subscribership Levels*. The Commission should heed the overwhelming opposition to conditioning support on subscribership levels. Almost all commenters agree that these requirements are unnecessary, given providers' natural incentives to increase their customer rolls, and must be rejected to prevent their chilling effect on bidding.

- *Pole Attachment Obligations*. The Commission should require all winning bidders to voluntarily subject themselves to Section 224 pole attachment rules throughout the states in which they bid, to encourage a level playing field where participants cannot inflate deployment costs by extracting excessive pole attachment rates from other winning bidders.

However it proceeds, the Commission should establish clear and fair transitional mechanisms. It should provide the optional seventh-year of CAF Phase II model-based support for all price cap carriers, not only those participating in the RDOF auction. The Commission should also provide legacy transition support through at least 2021 and provide transitional support when another provider wins RDOF support for a price cap area. For areas without a winning bidder, the Commission should offer the incumbent price cap carrier the option to accept continued funding. These transition procedures would avoid flash cuts in support and safeguard continuity of services for rural consumers.

II. THE RECORD SUPPORTS CONDUCTING THE RDOF AUCTION BASED ON RELIABLE BROADBAND DEPLOYMENT AND LOCATION DATA

A diverse set of commenters—state commissions, groups representing rural interests, and potential bidders—agree that the Commission should improve its deployment and location data before proceeding to the RDOF auction.[2] As one state commission notes, this is critical "for a large state with both significant rural areas and a substantial population living in areas unserved by broadband."[3] More accurate data will allow the Commission to designate for auction those areas that truly lack sufficient broadband today and will also give bidders the correct number of locations to which they are committing to deploy. These improvements "will ensure that limited universal service resources are targeted to the right areas."[4]

Windstream shares the Commission's desire to act quickly. Rural consumers are waiting. But the record demonstrates that obtaining more accurate deployment and location data does not have to delay the auction. As the record reflects, a location Fabric could be ready in five to eight

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[2] Comments of the California Public Utilities Commission at 3 (filed Sept. 20, 2019) ("CPUC Comments"); Comments of the National Association of Counties, the National Association of Development Organizations, and the Rural Community Assistance Partnership at 1-2 (filed Sept. 20, 2019) ("NACo Comments"); Comments of the Nebraska Public Service Commission at 4 (filed Sept. 20, 2019) ("NPSC Comments"); Comments of USTelecom—The Broadband Association at 9 (filed Sept. 20, 2019) ("USTelecom Comments"); Comments of Frontier Communications Corporation at 3-9 (filed Sept. 20, 2019) ("Frontier Comments"); Comments of the United States Cellular Corporation at 3, 10-11 (filed Sept. 20, 2019) ("USCC Comments"). Unless otherwise noted, all comments cited herein are to WC Docket Nos. 19-126 and 10-90.

[3] CPUC Comments at 3.

[4] NPSC Comments at 4.

months for census blocks identified for Phase I,[5] and improved nationwide data could be available in twelve to fifteen months,[6] "not much longer than it would take the Commission to finalize rules and procedures for an auction."[7] The Digital Opportunity Data Collection could be ready within the same time period with the right resources and priorities. If it takes a few months more to have deployment data ready before the Commission can finalize the areas eligible for the RDOF auction, Windstream submits that the brief delay is justified by ensuring that the right locations are deemed eligible—rather than left behind again—and that bidding produces efficient results based on accurate location counts.

If the Commission nonetheless decides to move forward with a two-phased approach,[8] Windstream agrees with USTelecom that the Commission should, at minimum, establish the location Fabric for the unserved census blocks that would be auctioned in Phase I.[9] As USTelecom estimates, this process will take only five to eight months and will foster a more efficient, informed bidding process by updating location counts and accurately geocoding identified locations in the auctioned blocks.[10]

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5 USTelecom Comments at 11.

6 CostQuest Associates, *Broadband Mapping Initiative Proof of Concept Summary of Findings* 5 (2019), attached to Letter from Jonathan Spalter, President & CEO, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 19-195, 11-10, 10-90, 19-126 (filed Aug. 20, 2019); Frontier Comments at 8; Comments of Windstream Services, LLC at 9 (filed Sept. 20, 2019) ("Windstream Comments").

7 Frontier Comments at 9; *see also* Windstream Comments at 8-9.

8 Such a decision would be in tension with the Commission's own recent observation that "the fixed and mobile broadband deployment data collected on the Form 477 are not sufficient to support the specific imperative of our USF policy goals." *Establishing the Digital Opportunity Data Collection et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC No. 19-79, 34 FCC Rcd. 7505, 7509 ¶ 10 (2019) (footnote omitted).

9 USTelecom Comments at 11.

10 *Id.* at 11-12.

Other commenters propose that the Commission proceed with existing data but use a robust challenge process in Phase I to address data inaccuracies.[11] While Windstream agrees that a robust challenge process would yield better deployment information than the current Form 477 data, a robust challenge process could take as much time to conduct as gathering better deployment and location information, and would not yield better results. The challenge process to determine census block eligibility for the offer of CAF Phase II model-based support took *nine months* from the release of the list of potentially eligible blocks to the initial order resolving challenges.[12] Subsequently, the Commission took an additional six months to resolve an application for review of the challenge process resolution order.[13] The Commission should use the time to develop the Fabric and improve its coverage data as a more effective means to determine census block eligibility, ensure the flow of support to unserved areas, and provide potential bidders with accurate location counts to inform their bids.

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[11] Comments of the Buckeye Hills Regional Council at 14-15 (filed Sept. 20, 2019) ("BHRC Comments"); Comments of ACA Connects–America's Communications Association at 18-20 (filed Sept. 20, 2019) ("ACA Comments"); Comments of NTCA–The Rural Broadband Association at 36 (filed Sept. 20, 2019) ("NTCA Comments"); Comments of the West Virginia Broadband Enhancement Council at 1 (filed Sept. 20, 2019) ("WVBEC Comments"); Comments of the Wireless Internet Service Providers Association at v-vi (filed Sept. 20, 2019) ("WISPA Comments").

[12] The list of potentially eligible census blocks was released in June 2014. The initial order resolving the challenges was released on March 30, 2015. *Connect America Fund; Connect America Phase II Challenge Process*, Order, DA No. 15-383, WC Docket Nos. 10-90 & 14-93, 30 FCC Rcd. 2718, 2718 ¶¶ 2-3 (2015).

[13] *Connect America Fund; Connect America Phase II Challenge Process*, Memorandum Opinion and Order, FCC No. 15-148, WC Docket Nos. 10-90 & 14-93, 30 FCC Rcd. 13039 (rel. Nov. 5, 2015).

III. IF THE COMMISSION PROCEEDS WITH A PHASE I AUCTION OF UNSERVED AREAS, THE RECORD SUPPORTS MULTIPLE IMPROVEMENTS IN AUCTION DESIGN

The record reflects broad consensus that, if the Commission proceeds with a two-phase auction, it should adopt marginal improvements to maximize the benefits for rural consumers. Windstream voices its support for many of the suggested improvements, while cautioning against changes that would slow the deployment of high-speed, low-latency broadband in rural areas or contribute to inefficient auction results.

A. Eligible Locations Should Be Areas Without 25/3 Mbps Service Availability.

Windstream and many others agree that, as a general rule, an eligible location should be one currently without voice and broadband service at 25/3 Mbps.[14] Windstream also agrees that eligible locations should include areas where the price cap carrier that received model-based support is the only terrestrial provider having deployed 25/3 Mbps in that block; were these areas to be excluded, they would not be able to receive incremental support that is essential to preserving 25/3 Mbps service.[15] For locations reported as served at 25/3 Mbps in the HUBB, the Commission should make the locations eligible for funding, but only where the applicant bids to upgrade the location to the Above Baseline or Gigabit tier. Otherwise, these locations will

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[14] Comments of Pacific Dataport, Inc. at 14 (filed Sept. 20, 2019) ("PDI Comments"); Comments of Adtran, Inc. at 14 (filed Sept. 20, 2019) ("Adtran Comments"); Comments of INCOMPAS at 12 (filed Sept. 20, 2019) ("INCOMPAS Comments"); Comments of the California Emerging Technology Fund at 3 (filed Sept. 20, 2019) ("CETF Comments"); Comments of the National Rural Electric Cooperative Association at 4 (filed Sept. 20, 2019) ("NRECA Comments"); USCC Comments at 5; ACA Comments at 18-19; WBEVC Comments at 1; NPSC Comments at 3; WISPA Comments at 27; USTelecom Comments at 41-42; NTCA Comments at iii.

[15] USTelecom Comments at 41-42.

remain stranded at lower speeds while higher tiers of service are deployed to the rest of the block.[16]

Windstream does not agree that the Commission should prioritize census blocks that lack 10/1 Mbps service.[17] USTelecom points out the logistical challenges and risk of overbuilding introduced by such an approach, given that many price cap areas currently without 10/1 Mbps service will have it by the end of 2020, the deadline for CAF Phase II model-based support recipients to complete their final deployment milestone.[18] In addition, prioritizing these locations could siphon away a disproportionate amount of support. Many factors likely contribute to these areas remaining underserved, such as very high costs, isolation from other network facilities, or other challenges that have rendered deployment uneconomic. Prioritizing these areas would likely result in a large amount of support being awarded to these areas, but fewer overall locations being funded. While Windstream agrees that, ultimately, all locations should be served with modern broadband, prioritizing these areas would result in fewer locations getting the benefit of more robust service in the short term.

Windstream also disagrees with WISPA's proposal that an area should be considered "served" if an unsubsidized provider offers qualifying broadband but not voice service.[19] The Commission addressed this issue previously, choosing to maintain voice service as a core

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16 *See id.* at 42.

17 *See* Comments of California Internet, L.P. DBA Geolinks at 2 (filed Sept. 20, 2019) ("Geolinks Comments"); Comments of Pennsylvania Public Utility Commission at 15 (filed Sept. 20, 2019); WISPA Comments at v.

18 USTelecom Comments at 43.

19 WISPA Comments at 5-7.

requirement for USF support and the legal basis for the CAF program.[20] As explained by the multiple oppositions to WISPA's Petition for Partial Reconsideration[21] on this issue, maintaining the voice requirement best serves the Commission's legal and policy goals.[22] The requirement protects consumer access to voice service "when there is no reliable substitute from a competing service provider," supports carriers that have invested in voice and broadband in high-cost areas in reliance on USF dollars, and ensures that incumbent carriers are not saddled with unfunded mandates such as continued carrier-of-last-resort obligations "without adequate support to meet those obligations."[23]

B. The Commission Should Adopt Census Blocks as the Minimum Geographic Unit for Bidding.

Upon review of the record, Windstream agrees with the many commenters calling for census blocks as the appropriate minimum geographic area for the RDOF auction.[24] Using census blocks as the minimum geographic unit for bidding will encourage additional bids both

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[20] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC No. 11-161, 26 FCC Rcd. 17663 ¶ 75 (2011) (subsequent history omitted) ("*USF/ICC Transformation Order*").

[21] Petition for Partial Reconsideration of the Wireless Internet Service Providers Association, WC Docket No. 10-90 (filed July 3, 2013).

[22] *See, e.g.*, Opposition of the Independent Telephone & Telecommunications Alliance at 3-4, WC Docket No. 10-90, *et al.* (filed Feb. 9, 2012) ("ITTA Opposition"); Opposition of Frontier Communications Corporation to Petitions for Reconsideration at 7-8, WC Docket No. 10-90, *et al.* (filed Feb. 9, 2012); Opposition of the National Exchange Carrier Association, Inc., *et al.* to Various Petitions for Reconsideration at 9-10, WC Docket No. 10-90, *et al.* (filed Feb. 9, 2012).

[23] ITTA Opposition at 2.

[24] Comments of the Utilities Technology Council at i, 6-8 (filed Sept. 20, 2019) ("UTC Comments"); ACA Comments at 3, 5, 9-12; *see* Comments of the Internet Society at 4 (filed Sept. 20, 2019).

from smaller providers not interested in bidding on larger areas and from existing providers looking to leverage the infrastructure they already have within their service territories.

Using individual census blocks as minimum eligible area will encourage bids from providers with existing infrastructure and service territories. As the Utilities Technology Council notes, "[i]nstead of being forced to overbid for larger census tracts or counties, which may not conform to their service territories, entities," including utilities and smaller providers, "will be able to target their bids to the specific census blocks of the areas that they are proposing to serve."[25] This observation squares with Windstream's own experience. During the CAF Phase II reverse auction, Windstream declined to bid on a number of census block groups precisely because too many locations within the groups fell outside of Windstream's service footprint. In total, Windstream declined to bid on over 8,000 locations within its footprint (representing more than a fifth of the total households in Windstream's footprint eligible for the Phase II reverse auction) because census block groups were used as the bidding unit, rather than census blocks. When extrapolated nationwide to reflect the service territories and auction experience of other providers,[26] it is likely that other providers also declined to bid, leaving thousands of locations without the benefit of an additional bid or with no bid at all.

In addition, census blocks, being smaller units, are more likely to be attractive geographic areas for smaller providers who might not be able to commit to building out to all the eligible blocks within a census block group. As noted by the Utilities Technologies Council, "many

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[25] UTC Comments at 8.

[26] *See, e.g.*, ACA Comments at 11 ("After the conclusion of the CAF Phase II auction, ACA Connects heard from many of its members that they, in fact, did not participate because the census block group bidding requirement would have forced them to pair economic and uneconomic census blocks.").

unserved areas [] went unfunded because bidders could not afford to meet the reserve price on an entire census block group."[27] While smaller bidders may be unable to bid on all the eligible census blocks in a census block group, they may well be able to bid on individual census blocks, generating additional bidding for those areas and potentially bringing service to individual census blocks that would otherwise remain unserved. Encouraging more participation in the auction, and more bidding, increases the likelihood that census blocks will actually attract a winning bid, rather than remaining unfunded for the next ten years and fall further behind in the digital divide.[28] Using census blocks as the bidding units preserves providers' ability to strategically bid for a group of census blocks, without forcing providers to do so.[29] ACA proposes a reasonable compromise where "the Commission can still achieve benefits of scale by allowing service providers to package bids for multiple census blocks during the RDOF auction" while adopting census blocks as the minimum geographic areas.[30] This would provide participants with the flexibility to craft efficient bidding strategies.

C. The Commission Should Establish Firm and Fair Deployment Requirements that Do Not Prioritize Haste Over Quality.

Windstream disagrees that bidders should get an advantage, such as bidding credits or accelerated support payments, for being willing to deploy faster than required by the proposed milestones.[31] Rather than narrowly focusing on the speed of deployment, the Commission should promote the buildout of robust networks that set the stage for long-term success in closing

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[27] UTC Comments at 8.

[28] *See* ACA Comments at 10.

[29] UTC Comments at 8.

[30] ACA Comments at 12.

[31] WISPA Comments at 15.

the digital divide and supporting 5G deployment. Preferencing speedy deployment will discourage bidders from planning to lay additional fiber, whether fiber-to-the-premises or new fiber backhaul or transport. Although fiber deployment may be slower than some other kinds of deployment, it supports higher speeds, superior reliability, and low latency. Moreover, it is a future-proof infrastructure critical to 5G deployment.[32]

Windstream also disagrees with proposals to mandate inclusion of community anchor institutions as entities that RDOF recipients must serve or work with in designing the network.[33] These requirements would overcomplicate the auction and provider obligations.[34] It would take significant resources for the providers to identify which census blocks contain anchor institutions and what services these institutions require. This added complication lends uncertainty to providers' deployment costs and would be factored into their bids, ultimately translating to fewer bids at higher cost. Moreover, providers already have an incentive to maximize use of their networks, which necessarily includes service to both public and private sector anchor institutions.

Finally, the Commission should establish clear rules-of-the-road before the auction. Some commenters suggest that the Commission plan to increase the speed or usage requirements

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[32] Windstream Comments at 13; *see* USTelecom Comments at 20-21; Comments of North Dakota Joint Commenters at 2 (filed Sept. 20, 2019) ("NDJC Comments") (noting that "[f]iber optic systems are designed for significantly greater longevity," capable of lasting 35 to 50 years).

[33] Comments of the Schools, Health & Libraries Broadband ("SHLB") Coalition *et al.* at 2-7 (filed Sept. 20, 2019); Comments of Race Telecommunications, Inc. at 3, 10 (filed Sept. 20, 2019) ("Race Telecommunications Comments"); CETF Comments at 10.

[34] Connect America Phase II model-based support recipients (as well as other high-cost support recipients) are already required to bid in response to Form 470s posted to E-rate eligible entities seeking qualifying broadband services. 47 C.F.R. § 54.309(b).

during the 10-year term of support.[35] But without knowing precisely what they need to be able to provide, providers will be handicapped in estimating their costs and will likely include within their bids a cushion against the risk that their planned deployments will be insufficient to meet their unknown, future obligations. The end result is higher bids and possibly fewer bidders, leading to less efficient distribution of the support budgeted for the RDOF auction. Windstream encourages the Commission to set clear and certain service requirements in advance of the auction so that providers can formulate bids to those requirements.

D. The Commission Should Establish Performance Tiers and Bidding Weights that Encourage Higher-Speed, Lower-Latency Services.

Many commenters agree with Windstream that the Commission should establish performance tiers and weights that encourage fiber deployment.[36] Fiber "offer[s] the capacity and longevity to match the FCC's objectives"[37] with a service life of thirty-five to fifty years.[38] Fiber also provides a critical input for future 5G technologies.[39] In addition, the Commission has recognized fiber deployment as the "ideal" way to "create[e] resilient networks hardened against disasters."[40] Consequently, Windstream agrees with the tide of commenters calling for the Commission to increase the weight assigned to high-latency bids.[41] Increasing this weight above

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35 *But see* NTCA Comments at 9-10; CETF Comments at 9.

36 *See, e.g.*, NDJC Comments at 2; USTelecom Comments at 20-24; BHRC Comments at 9; Adtran Comments at 10; UTC Comments at 3-4, 10.

37 BHRC Comments at 9.

38 NDJC Comments at 2.

39 USTelecom Comments at 20-21.

40 *The Uniendo a Puerto Rico Fund and the Connect USVI Fund et al.*, Report and Order and Order on Reconsideration, FCC No. 19-95, WC Docket Nos. 18-143, 10-90, 14-58, ¶ 29 (rel. Sept. 30, 2019) ("*PR/VI Order*").

41 *E.g.*, Comments of ITTA–The Voice of America's Broadband Providers at 5, 18-19 (filed Sept. 20, 2019) ("ITTA Comments"); USTelecom Comments at 21-24;

40 would better align the auction with the Commission's prioritization of higher-than-Baseline speeds and low-latency services "to encourage the deployment of higher speed services, and in recognition that terrestrial fixed networks may serve as a backbone for 5G deployments."[42] Windstream also supports reducing by at least ten points the weight assigned to the above-baseline tier of ≥ 100/20 Mbps. This would encourage bids at these higher, more future-proof speeds without reducing providers' incentives to submit bids in the Gigabit tier.[43] Windstream does not support raising the above-baseline tier to 200 Mbps download with 2 TB of monthly usage.[44] While non-residential users may want speeds higher than 100 Mbps, requiring providers to deploy 200 Mbps to entire areas is a substantial additional commitment in electronics, network nodes, and backhaul capacity that would likely discourage bidding at the above-baseline tier. In other words, this requirement would result in more locations with 25/3 Mbps, not 200/20 Mbps. It thus would fail to accomplish the intended purpose of providing higher speeds to businesses and anchor institutions in rural communities.

Windstream agrees with Sacred Wind Communications that the Commission should create an additional performance tier of 50/6 Mbps to provide another opportunity for rural areas to receive higher-speed services.[45] This intermediate tier would incentivize providers to use other technologies to "provid[e] broadband services well in excess of 25/3 Mbps" to areas where the fiber deployment required for above baseline or Gigabit speeds remains cost prohibitive.[46] Nor would an additional tier overcomplicate the auction, as the Commission already has

[42] *Notice* ¶ 25; *see also PR/VI Order* ¶ 22.

[43] WISPA Comments at 12; *see also* Windstream Comments at 16.

[44] Race Telecommunications Comments at 3, 8.

[45] Sacred Wind Comments at 6.

[46] *Id.*

experience implementing a four-tier auction from CAF Phase II. The Commission should assign this intermediate tier a weight of 25, while reducing the weight for the above-baseline tier to 15. This would promote deployment at the intermediate tier, above the 25/3 Mbps minimum, without discouraging fiber deployment in the areas where it is economically viable.

In addition, the Commission should not create a new symmetrical service tier or otherwise reward providers willing to offer symmetrical service.[47] As a practical matter, symmetrical service is often provided over fiber to the premises, which the *NPRM* already rewards by assigning a weight of "0" to the Gigabit tier.[48] Windstream would also oppose increasing the weight for providers offering fixed wireless service.[49] All providers, regardless of their choice of technology, have the obligation to ensure that they can meet their deployment obligations. Providers using radiofrequency technologies must consider the topography of the relevant area and how that may affect their ability to provide committed speeds at all locations.

E. The Commission Should Require Bidders to Offer Voice Telephony on Day One of Receiving High-cost Support.

The Commission must ensure that winning bidders provide voice service throughout the winning area "as an ETC beginning in the first month that USAC disburses [RDOF] support to them."[50] This is consistent with the Commission's longstanding rules governing ETC obligations.[51] Winning bidders retain flexibility under these rules to participate in the auction

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[47] Comments of WTA–Advocates for Rural Broadband at 11 (filed Sept. 20, 2019) ("WTA Comments"); NTCA Comments at 14; NRECA Comments at 6-7.

[48] *Notice* ¶ 25.

[49] NDJC Comments at 2-4.

[50] USTelecom Comments at 27.

[51] 47 C.F.R. § 54.201(d)-(d)(1); *see also* 47 U.S.C. § 214(e)(1)(A).

and plan their deployment strategies, as they can satisfy the voice obligations either through their own facilities or, if the bidder initially lacks voice-capable facilities, through utilizing commercially available resale agreements with existing providers.

As with prior auctions, bidders must also be prepared to offer standalone voice.[52] Voice telephony remains the core supported service for USF and a legal obligation for recipients of high-cost support.[53] As important as broadband is, not all households yet choose to subscribe. As of December 2017, the adoption rate for 10/1 Mbps was 69.4%.[54] While WISPA suggests that removing the standalone voice requirement would have little negative consumer impact,[55] the data show that for many households, broadband is not an attractive option. Moreover, any high-cost service offering must include a telecommunications service, which broadband Internet access is not.[56]

F. The Commission Should Adopt Reasonable Upfront Requirements to Minimize Risk of Bidder Default from Deployment Obligations.

Many commenters agree that the Commission can do more to ensure that bidders are prepared to meet their obligations if they should win. Windstream restates its concern that, despite the sensible precautions taken by the Commission for the CAF Phase II auction, thirteen

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52 *But see* Comments of Space Exploration Technologies Corp. at 3-6 (filed Sept. 20, 2019); Geolinks Comments at 8; WISPA Comments at 10; NACo Comments at 2.

53 *See USF/ICC Transformation Order* ¶¶ 5, 75.

54 *See Communications Marketplace Report et al.*, Report, FCC No. 18-181, 33 FCC Rcd. 12,558, App. D-8 (2018).

55 WISPA Comments at 10-11.

56 *See* 47 U.S.C. §§ 214(e), 254(e); 47 C.F.R. § 54.201; *Mozilla Corp. v. FCC*, No. 18-1051, 2019 WL 4777860, at *46 (D.C. Cir. Oct. 1, 2019) (observing that the Commission's classification of broadband Internet access service as a non-telecommunications service facially disqualifies broadband from receiving universal service support in the Lifeline context).

bidders still defaulted. The forfeiture penalties proposed against them, which range from $1,242 to $30,000,[57] did not deter these entities from bidding. The record reflects support for stronger safeguards such as capping bids at the provider's annual revenue and requiring more technical information in the short form, including the ability to add subscribers and confirming that the bidder has a plan for offering voice services on day one.[58] The Commission should also require bidders to place an amount in escrow account before bidding, "to ensure that [they] have sufficient scale and experience to deliver on their obligations."[59] In addition, the Commission should adopt a protective order for long form applications that allows only outside counsel to

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57 *Crocker Communications, Inc.*, Notice of Apparent Liability for Forfeiture, DA No. 19-958, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $6,000 for defaulting on its winning bid); *Farmers Mutual Telephone Company*, Notice of Apparent Liability for Forfeiture, DA No. 19-946, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $3,000); *Fidelity Communications Company*, Notice of Apparent Liability for Forfeiture, DA No. 19-947, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $3,641); *Hanson Communications, Inc.*, Notice of Apparent Liability for Forfeiture, DA No. 19-948, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $6,000); *Johnson Telephone Company*, Notice of Apparent Liability for Forfeiture, DA No.19-949, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $3,000); *LTD Broadband LLC*, Notice of Apparent Liability for Forfeiture, DA No. 19-950, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $3,563); *MGW Networks, LLC*, Notice of Apparent Liability for Forfeiture, DA No. 19-951, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $6,000); *NE Colorado Cellular, Inc.*, Notice of Apparent Liability for Forfeiture, DA No. 19-952, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $4,383); *Pine Cellular Phones, Inc.*, Notice of Apparent Liability for Forfeiture, DA No. 19-953, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $16,750); *SyncWave, LLC*, Notice of Apparent Liability for Forfeiture, DA No. 19-954, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $1,242); *Total Highspeed LLC*, Notice of Apparent Liability for Forfeiture, DA No. 19-955, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $30,000); *Townes Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, DA No. 19-956, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $9,504); *Workable Programs & Systems, Inc.*, Notice of Apparent Liability for Forfeiture, DA No. 19-957, 1 (EB rel. Oct. 11, 2019) (proposing a penalty of $16,200).

58 USTelecom Comments at 19-20, 28.

59 Frontier Comments at 14; *see* USTelecom Comments at 46.

review and challenge those applications. This would ensure careful vetting of applicants while safeguarding sensitive commercial information from competitors.

The Commission should not, however, forbear from the requirement that bidders must become ETCs before receiving support.[60] The ETC requirements ensure that states, or the Commission acting in lieu of a state, have authority to monitor a provider's use of high-cost support and enforce the obligation to provide supported service throughout the provider's service area.[61] Dropping this requirement, or even delaying it until post-auction, "eliminates states' ability to help prevent unqualified bidders from participating and relegates the states to a role of being able only to nullify the auction result rather than shape it constructively."[62]

Windstream also opposes excluding entirely bidders that have filed for protection under the bankruptcy laws or have emerged from bankruptcy within five years of the auction.[63] Entities that recently filed for or emerged from bankruptcy could not use USF as a "financial prop"[64] any more than any other provider; the Commission's rules already require *all* recipients to use USF support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[65] If anything, the debt reduction and reorganization that

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60 *But see* PDI Comments at 5, 12.

61 *See Lifeline and Link Up Reform and Modernization, et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC No. 16-38, 31 FCC Rcd. 3962, 4175-77 (2016) (Dissenting Statement of Commissioner Ajit Pai) (noting that Congress conferred primary authority for ETC designations to the states, while Commission authority over ETC designations is limited to cases where the designated carrier is "providing telephone exchange service and exchange access" that is not subject to state jurisdiction).

62 Frontier Comments at 13.

63 NRECA Comments at 14.

64 NRECA Comments at 14.

65 47 C.F.R. § 54.7(a).

entities complete in bankruptcy proceedings may place them in financially healthier positions than other bidders. Moreover, the auction itself, through competing bids, will weed out bidders seeking excessive amounts of support. A blanket exclusion would serve no purpose other than to deprive the auction of otherwise eligible providers, at a cost to consumers and the Fund.

G. The Record Overwhelmingly Supports Easing or Eliminating Letter of Credit Requirements.

The record overwhelmingly reflects the waste and negative ramifications of the letter of credit ("LoC") requirement.[66] Not only does it impose a costly, time-consuming burden on providers, the LoC requirement also diverts USF funds to banks and reduces access to capital needed for deployment.[67]

There are better options for risk protection. While the best solution is to eliminate the LoC requirement entirely in favor of other upfront requirements (e.g., escrow),[68] Windstream also supports USTelecom's proposal as an appropriate alternative that reduces LoC obligations commensurate with recipients' "proven track record of meeting their universal service obligations."[69] After a participant completes its first and second milestones in any universal

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66 Comments of @Link Services, LLC at 2-5 (filed Sept. 20, 2019) ("AtLink Comments"); Comments of the Surety & Fidelity Association of America at 2 (filed Sept. 20, 2019); GeoLinks Comments at 9-10; ITTA Comments at 15; Comments of CenturyLink at 10 (filed Sept. 20, 2019) ("CenturyLink Comments"); USTelecom Comments at 44-45; INCOMPAS Comments at 13-14; NRECA Comments at 15; WISPA Comments at 34-35.

67 *See* ITTA Comments at 15; CenturyLink Comments at 10; GeoLinks Comments at 9-10; USTelecom Comments at 44-45.

68 Windstream Comments at 17-19.

69 USTelecom Comments at 46.

service program, the Commission should cut the LoC requirement by half.[70] This presents a common sense approach that lessens the level of LoC obligations for lower-risk recipients.[71]

H. The Commission Should Not Penalize Providers When Bad Data Overcounts Unserved Locations.

Windstream agrees with comments that winning bidders should not be penalized because the broadband data fail to accurately reflect the number of locations within a census block.[72] The record overwhelmingly reflects the need for the Commission to hold providers harmless when the number of locations in an area differs from those in the FCC data.[73] As NCTA explains, reducing support on a pro rata basis because of flaws in the FCC data "not only risks unfairly penalizing RDOF recipients" but also flies in the face of the realities of network construction.[74] Many deployment costs are "fixed" irrespective of the number of locations.[75] Once assured that their level of funding will not change because of bad data, providers will be better able to assess how much to bid to cover their costs. Providers can bid with greater confidence, optimizing auction results as more eligible areas are likely to receive competing bids promising more deployment for less USF dollars.[76]

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70 *Id.*

71 *Id.*

72 *Id.* 12-15.

73 *Id.* at 14, 16; ITTA Comments at 5; WTA Comments at 18; NTCA Comments at 21-22.

74 NTCA Comments at 21.

75 *Id.*; *see also* Windstream Comments at 21.

76 USTelecom Comments at 15; Windstream Comments at 21.

I. Almost All Commenters Urge the Commission to Reject Subscribership Requirements as Unnecessary and Unreasonable.

The record reflects almost universal opposition against mandating subscribership levels.[77] Subscribership milestones are unnecessary, as providers have every incentive to attract subscribers already.[78] Subscribership milestones are also counterproductive to the Commission's policy goals, creating a chilling effect on bidding.[79] This requirement may particularly discourage bidding to deploy to "unserved areas or very remote or Tribal areas where broadband awareness and income levels may be low," where providers face greater challenges to building a subscriber base.[80] The problem is further exacerbated by bad data, as providers cannot rely on current location counts to estimate the potential subscriber pool. Providers thus would need to factor in the risks of losing support because of overcounting and failure to meet subscribership milestones, compounding the likelihood that they will drop out or submit high bids.

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[77] CenturyLink Comments at 17-19; ITTA Comments at 5-6, 23-26; Race Telecommunications Comments at 3, 11; USCC Comments at 8; USTelecom Comments at 36; WTA Comments at 20; NCTA Comments at 7; GeoLinks Comments at 5; Sacred Wind Comments at 8; Adtran Comments at 14; INCOMPAS Comments at 14; WISPA Comments at 21-26; CETF Comments at 13; NRECA Comments at 15. Even the minority of commenters that support some degree of subscribership milestones largely agree that a 70% milestone is unrealistic. NTCA Comments at 27-28; BHRC Comments at 13; UTC Comments at 11-12; ACA Comments at 16-18.

[78] ITTA Comments at 24; INCOMPAS Comments at 14; WTA Comments at 21.

[79] ITTA Comments at 26 ("Moreover, even at a lower subscribership rate, the bottom line is that adoption of subscribership milestones would depress interest in the RDOF auction, because potential bidders would find them too risky."); Race Telecommunications Comments at 11; USTelecom Comments at 36-37 (explaining that subscribership level requirements "may not just dampen participation, but drive otherwise willing bidders out of the auction altogether").

[80] Race Telecommunications Comments at 11-12.

J. The Commission Should Ensure that Winning Bidders are Subject to the Same Section 224 Pole Attachment Obligations.

Windstream agrees with ITTA that the Commission should require all winning bidders to "voluntarily subject [themselves] to the authority of Section 224 across the entirety of any state in which [they] bid[]."[81] Excessive pole attachment rates inflate the cost of rural broadband deployment, which in turn would push providers to scale back deployment plans or pass on the cost to consumers.[82] As ITTA notes, "[i]t is not uncommon for municipal and cooperative electric utility pole owners to leverage the broadband provider's need for access to their poles to extract other concessions that directly or indirectly escalate broadband deployment costs."[83] Requiring all RDOF participants to commit to provide pole access consistent with Section 224 (as a condition of receiving RDOF support) would minimize these harms, at least for winning bidders in states where pole owners are not otherwise subject to Section 224 in other areas within the state.[84]

IV. THE COMMISSION SHOULD PROVIDE TRANSITIONAL SUPPORT TO ENSURE CONTINUITY OF SERVICE TO CUSTOMERS AND A PREDICTABLE, EASILY ADMINISTRABLE TRANSITION

Windstream restates the need for clear, fair, and equitable rules governing the transition from CAF Phase II model-based support to RDOF support.[85] To facilitate a smooth transition, the Commission should provide the optional seventh year of CAF Phase II model-based support and continue its current federal high-cost support mechanisms, CAF II model-based support and

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[81] ITTA Comments at 23.

[82] *Id.* at 22-23.

[83] *Id.* at 22.

[84] *Id.* at 23.

[85] Windstream Comments at 22-26.

legacy transition support, through at least 2021.[86] This would ensure that the obligations to meet CAF II service requirements, which are contingent on the receipt of support, remain in effect, safeguarding service availability and deployment for consumers during the transition period.[87] The additional year of support would align also with price cap model support recipients' settled expectations, providing them with sufficient time to budget and prepare for the phase-out of CAF II funding.[88] This lends further stability to the transition process, consistent with the Commission's statutory obligation to provide "predictable and sufficient" universal service support mechanisms.[89] Additionally, continued support would minimize administrative burdens by providing the Commission with the full year of 2021 to complete post-auction procedures for RDOF and implement a timeframe "that would align all RDOF recipients with a simple, clean calendar-year basis for receipt of support and corresponding obligations."[90]

Windstream agrees with ITTA that the optional seventh year of support should be extended for *all* price cap carriers, not only those that do not win or bid in the RDOF auction, for the exact reason raised in the *NPRM*.[91] By the end of 2020, the Commission likely will not know the results of the auction to distinguish between the two categories, nor will it be ready to begin disbursing RDOF support.[92] Windstream also agrees that the Commission should provide transitional support when another provider wins RDOF support for a price cap area. Otherwise,

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[86] CenturyLink Comments at 2, 5-6; USTelecom Comments at 31-32.

[87] CenturyLink Comments at 5-6.

[88] *Id.* at 2, 5; USTelecom Comments at 32.

[89] USTelecom Comments at 32 (citing 47 U.S.C. § 254(b)(5)).

[90] CenturyLink Comments at 6-7.

[91] ITTA Comments at 29; *Notice* ¶ 101.

[92] ITTA Comments at 29.

"a flash cut of price cap carrier support" would harm consumers by pushing the carrier to exit the market or raise prices.[93] To ensure continuity of service to customers, the Commission should maintain "support to the price cap carrier at the support level of the winning bidder, until the winning bidder is able to serve all locations currently served by the price cap carrier."[94] Similarly, in areas without a winning bidder, the Commission should continue funding for the incumbent price cap carrier, or at least offer the carrier the option to accept such funding, to protect consumers from a loss of voice and broadband service.[95]

V. CONCLUSION

The RDOF presents a critical opportunity to narrow the digital divide and set the stage for bringing future advancements in broadband technologies to rural America. As a critical first step, the Commission should heed the recommendations from diverse stakeholders to obtain more accurate broadband data before proceeding with the auction. Should the Commission move forward with a two-phased RDOF, however, it should adopt the improvements supported by Windstream to maximize the benefits to rural consumers and efficiently target limited USF resources.

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[93] *Id.* at 31.

[94] *Id.*

[95] USTelecom Comments at 29-30.

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